IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.120 OF 1999
IN
FIRST ALPPEAL NO.119 OF 1987

Ramnath Singh Bindeshwari Singh)
(since deceased), Indian Inhabitant)
at present residing at Khairuddinpur,)
Post Gutwan, Dist. Jaunpur, U.P.)
)
1(a) Smt.Sahazadi Devi widow of Ramnath)
Singh.)
)
1(b) Satyanarayan Singh s/o.Ramnath)
Singh)
)
1(c) Haridayanarayan Singh s/o.Ramnath)
Singh)
)
1(d) Shrinarayan Singh s/o.Ramnath Singh)
)
1(e)Shyamanarayan Singh s/o.Ramnath Singh)
)
Nos.1(a), 1(c) and 1(d) at present)
residing at Khairuddinpur, Post Gutwan)
District Jaunpur, U.P. and at 16-250,)
Siddirth Nagar, Division 4, Goregaon)
(West), Bombay-400 062.)..APPELLANTS

Versus

1.Baijnath Singh S/o.Bindeshwari Singh)
Indian Inhabitant, residing at)
Shrikrishna Dugdhalaya at Shed No.172/2)
Jayprakash Road, Khar (East),Bombay-52.)
)
2.Ramdhar Singh s/o.Bideshwari Singh)
since deceased through his legal heirs:)
)
2(a) Braj Bhusan Singh Ramdhar Singh,)
residing at Village and office Gutwan,)
Sub-Office Jalalpur, Dist. Jaunpur,)
Uttar Pradesh.)
)
2(b)Kevaladevi Gajendra Bahadursingh)
C/o.Shet-Bhahadursingh, r/o.Village &)
Post Bhanda, Dist. Jaunpur,Uttar Pradesh)
)
3.Markande Singh s/o.Sankataprasad Singh)
)
4.Murari Singh S/o.Sankataprasad Singh)
)
Nos.2, 3, 4 are Indian Inhabitant,)
residing at Village Khairuddin, Post)
Gutwan, District Jaunpur, U.P.)
)

4A.Smt.Jaldharadevi w/o.Sankata Prasad)
Singh, since deceased by her heirs:-)
)
4A-1) Markande Singh s/o.Sankata Prasad)
Singh,)
)
4A-2) Murarisingh w/o.Sankata Prasad)
Singh,)
4A-3)Smt.Shakuntala Devi w/o.Hiramansingh)
R/o.Mikipur, Dist. Varanashi)
)
4A-4) Smt. Parvatidevi s/o.Surendra)
Prasad)
R/o.Adyaprasad Singh Village Rale)
Shahaganj, Dist. Jaunpur (U.P.))
)
4B.Smt.Shakuntaladevi w/o.Hiramani Singh)
Indian Inhabitant, residing at Village)
Milkipur, Post Suryavan, Dist. Varanashi)
U.P.)
)
4C. Smt.Parvatidevi wife of)
Surendraprasad Singh, Indian Inhabitant)
residing at c/o.Adyaprasad Singh,)
village Raie, Post Ulgo (Atara))
Sahagan, Dist. Jaunpur, U.P.)

Mr. D.M. Sawant i/b. Mr. S.L.Suryawanshi, for the Appellants.
Mr. Vishwanath Talkute for Respondent No.1.
Mr. Deepak S. Jadhav for Respondent Nos.2(a), 2(B), 3, 4A-3, 4A-4.

CORAM: F.I. REBELLO & ANOOP V.MOHTA, JJ.
DATE : 26th August, 2004

ORAL JUDGMENT (PER F.I. REBELLO, J.):

. One Ramnath Singh Bindeshwari Singh, as plaintiff, now represented by his legal heirs filed a suit against Baijnath Singh s/o. Bindeshwari Singh as defendant NO.1, Ramadhar Singh s/o.Bindeshwari Singh, as defendant No.2, Markande Singh, son of Sankathaprasad Singh, as defendant No.3, Murari Singh s/o.Sankathaprasad Singh as Defendant No.4 and Defendant Nos.4A, 4B and 4C, who are widow and married daughter Shankathaprasad Singh.

. The principal relief sought in the suit read as

follows:-

> "a) That it may be declared that the firm of Shri Krishna Dugdhalaya situated at Shed No.172/2, Jayaprakash Road, Khar, East, Bombay 52, its goodwill, stock-in-trade and its all other assets and paraphernalia and the tenancy right thereof and the Leasehold interest in the Land admeasuring 34-30 sq. metres bearing Survey No.172 Hissa No.8 at Jayaprakash Nagar Road, Khar, East, Bombay and structure standing thereon are the joint Hindu family properties of the plaintiff and the Defendants."

Consequential directions were sought based on the above relief.

2. Issues were framed by the learned trial Court and the relevant issues for deciding the controversy are Issue Nos. 5 and 6 which read as follows:-

> "5. Do plaintiffs prove that the suit property in Bombay is the joint and undivided Hindu Family property owned by late Ramnathsingh Bindeshwarisihingh and Defendant Nos.1 to 4 and 4A to 4C even though the partition of the other properties took place?
>
> 6.Do plaintiffs prove that the business of Shrikrishna Dugdhalaya situated at Shed NO.172/2, Jayprakash Road, Khar (East), Bombay-62, its goodwill,stock-in-trade,

tenancy right and the lease-hold interest in the land admeasuring about 34.30 square Meters bearing Survey No.172, Hissa No.8, situated as above belongs to the joint and undivided Hindu family inspite of the partition of the other properties?"

. The learned trial Judge answered both the issues in the negative. While answering Issue No.5 the learned Judge recorded a finding that the Bombay property purchased by Sankataprasad Singh under an Indenture of 13th October, 19045 was the self acquired property of Sankataprasad Singh and the plaintiffs were unable to discharge the burden to show that the property was purchased from the funds of the joint family. The trial Court also relied on Exhibit 138 which shows that the documents was standing in the name of Sankataprasad Singh. After considering the evidence thereafter the trial Court answered the issue in the negative. Consequent to that and considering the evidence in so far as Issue No.6 is concerned, the learned trial Court held that the defendant NO.1 was able to establish that the suit property and the suit business are self acquired and separate properties.

3. The legal representatives of the original plaintiff aggrieved by the judgment and order of the trial Court preferred an Appeal which was numbered as First Appeal No.119 of 1987. That Appeal came to be dismissed by the learned Single Jduge by order dated 29th September, 1998. The learned single Judge addressed himself to the question as to whether the appellants had been able to establish that the property in

Bombay was purchased from the common funds of the joint family. The learned Judge held that it was common ground amongst parties that nothing was contributed from the joint family property to purchase the property at Bombay. The learned Judge further held that thus it was clear that the nucleus for purchase of the property at Bombay was not provided from the estate of the joint family situated in Utter Pradesh and thus confirmed the finding recorded by the trial Corut that the property at Mumbai would not be joint family property.

. It was then contended before the learned Single Judge that the property was acquired by some memebrs of the family. The learned Judge held that merely because even if it was established that the property was purchased from the contribution made by some members, it would not be the property of the joint family, but the property of the persons who have contributed for acquisition of that property. The other contention considered and dealt with was that the son of the original plaintiff Ramnath had contributed for the purpose of purchase of the property. The learned Judge opined, that in that event the son of the original plaintiff Ramnath may become entitled to claim share in the property. However, the original plaitiff would not become entitled to claim his share because of contribution made by his son, unless it is shown that the son authorised the father to file a suit on his behalf and it was nobody's case that the son had so authorised. In the light of that dismissed the Appeal.

4. It is this order which is the subject matter of the

present Letters Patent Appeal. Learned Counsel has drawn my attention to the pleadings in para.1 of the plaint to contend that the case of the appellants all throughout was that it was the property purchased by some members of the joint family and it is these memebers who had equal right in that property. It is not possible at this stage to accept the said submission considering the relief sought in the plaint and the issues that were framed and answered. All proceded on the footing that the purpperty was a property of the Joint Hindu Family. There was no issue framed that the property was the property of some of the members of the joint family of the original HUF who had purchased the property and were entitled to separate partition. If that had been the case Issue No.5 would have been framed differently. Even on facts and considering the evidence, both the trial Court and the first Appellate Court have come to the conclusion that there was no evidence either documentary or oral to record a finding that the property was purchased in the name of Sankataprasad Singh from contribution of all other members who claim right in the property. These are purely findings of fact recorded by the Courts below. There is no question of law involved except what was contended earlier and which cannot be raised for the first time in the Letters Patent Appeal and even otherwise considering the evidence was not proved by the plaintiff. Much was made out about the document Exhibit "D". That document firstly did not have the signature of the persons who have purported to be parties to the said agreement and the trial Court has also not accepted the genuiness of the said document.

4. For all the aforesaid reasons, we find no merit in this appeal which is consequently dismissed. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J)